Precursor® LLC
7925 Jones Branch Drive, Suite 6200
McLean, Virginia 22102
p (202) 828-7800 c (703) 217-2407
www.precursor.com

Hon. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: WC Docket No. 11-118

Dear Secretary Dortch:

Enclosed for filing in connection with the above-captioned docket is my analysis of the National Cable and Telecommunications Association's Petition for Declaratory Ruling to Clarify 47 U.S.C. § 572 in the Context of Transactions Between Competitive Local Exchange Carriers And Cable Operators.

Sincerely,

Scott Cleland

President, Precursor LLC

Chairman, NetCompetition.org

FCC Needs to Update Sect. 652 to Conform with Market Reality & Congress' Intent
Submitted by Scott Cleland on Mon, 2011-08-22 14:54

An easy way for the FCC to show respect for the President's Executive Order to eliminate "outmoded" and "excessively burdensome" regulations would be to grant the NCTA's petition for a declaratory ruling, that Section 652 of the 1996 Telecom Act, (intended to encourage incumbent local telcos and cable companies to compete in telephony and video) was not meant to prohibit pro-competitive mergers between cable companies and new entrant CLECs that didn't exist in 1996 and thus have no market power.

The FCC Sect. 652 status quo is counterproductive in perversely thwarting a central competition policy goal of the 1996 Telecom Act: i.e. promotion of cable-telco competition.

- By creating unnecessary regulatory uncertainty around actual and potential cable-CLEC mergers, at both the FCC and with local franchising authorities, the FCC effectively has created a regulatory barrier to more cable-telco competition.
- We cannot "win the future" with a broadband Internet "excessively burdened" with anachronistic analog anchors like the FCC's current interpretation of Sect. 652.

Specifically, the NCTA's petition exposes a dysfunctional local franchising authority review process that has no standards or time limits, which makes the overall regulatory review process for cable-CLEC mergers uncertain, arbitrary, and "excessively burdensome."

Generally, there is no need for the FCC to prohibit or impede cable-CLEC mergers.

First, Section 652 is a redundant and unnecessary backstop of antitrust law.

- Antitrust law is timeless as it focuses on prohibiting anti-competitive or monopolistic behaviors and practices in any industry or situation.
- In contrast, Sect. 652 is woefully out-of-date, and focuses on prohibiting selected industry-specific merger combinations that may or may not over time be anti-competitive as technology transforms the competitive Internet marketplace.

Second, prohibiting or impeding cable-CLEC mergers based on anachronistic assumptions of analog voice and video competition from 1996, ignores sixteen years of transformative technological change and innovation including:

- The advent of robust facilities-based broadband competition using a wide variety of wireline and wireless technologies; and
- A wide variety of competitive digital voice and video Internet applications like: Microsoft-Skype; Apple's iChat & Facetime; Google Voice, Youtube, & Hangouts; Cisco Telepresence; Facebook Messenger; Vonage; and GoToMeeting.com -- to name only the most widely-used competitive internet telephony and video products and services.
- Given this veritable explosion of vibrant Internet voice and video competition, it is remarkable and befuddling that in the robustly competitive broadband Internet situation of 2011, the FCC appears stuck in a 1996 analog mindset concerning Sect. 652.

In sum, the FCC should update its interpretation of Sect. 652 to:

- Comply with Congressional intent to promote competition between incumbent local telcos and cable companies and allow cable-CLEC mergers; and
- Comport with the market realities in 2011 of vibrant multi-dimensional broadband Internet voice and video competition.

Simply, cable-CLEC mergers present no threat to competition that antitrust law or the FCC's public interest standard cannot address if necessary.